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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973.

No. 73-2032

LOCAL 399, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD AND ILLINOIS BELL TELEPHONE COMPANY,
Respondents.

BRIEF OF ILLINOIS BELL TELEPHONE COMPANY IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI.

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Gunthorp-Warren Printing Company, Chicago • 346-1717

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OPINIONS BELOW.

The opinion of the Court of Appeals is not yet reported and is Appendix A to the petition. The decision of the National Labor Relations Board is reported at 200 NLRB No. 159 (Pet. App. C).

JURISDICTION.

The jurisdictional requisites are adequately set forth in the petition.

QUESTION PRESENTED.

Whether the Board and the Court of Appeals abused their discretion in deciding that the Union's threats and its attempt to

cause the discharge of one employee who had not paid union dues violated the National Labor Relations Act (Section 8(b)(2) and 8(b)(1)(A)). That statute is quoted on page 4 of the petition.

STATEMENT OF THE CASE.

In March, 1968, Robert Galka left the Union and the bargaining unit to become a foreman. In February, 1969, he returned to the bargaining unit but he did not rejoin the Union until December, 1970, when he did so "under protest." Between June and December, 1970, the Union repeatedly threatened Galka and finally coerced him into joining. The Administrative Law Judge, the panel of the Labor Board (consisting of Chairman Miller and Members Jenkins and Penello), and Circuit Judges Kiley, Cummings and Sprecher all held that the threats and the coercion violated the Act. All of them found that the Union was not excused by the contract between the Union and the Company, or by any provision of the Union's internal documents.

Illinois Bell was made a party to the circuit court proceeding by an order of that court dated April 20, 1973, and is shown as such in the caption of that court's opinion (Pet. App. A). It is therefore a party in this Court under Rule 21, even though it is otherwise ignored in the petition.

ARGUMENT.

The facts of this case are clear, but the situation occurs very infrequently. Pages 8 and 18 of the petition unfairly accuse the Board of an "attempt to revive" a 1948 decision (the *Idarado* case in 77 NLRB) after a "retreat" which allowed it to be "dormant for many years." But there is nothing to show that the Board ever followed any different rule in the interim. A much more rational interpretation of this scanty history is that the Board simply had no need to apply the rule "for many years."

There is no substantial claim of any conflict of decisions, and the opinions below are plainly correct. The petition relies on *NLRB* v. *Industrial Towel Service*, 473 F. 2d 1258 (C. A. 6, 1973). But that case involved an absence caused by illness with different facts and documents which convinced the Sixth Circuit that the employee had never severed her connection with the bargaining unit. There is no way of knowing how the Sixth Circuit would have decided this case, particularly since it never even mentioned the *Idarado* case, which was relied on by the Board and the Seventh Circuit in this case.

The relief ordered by the Board was very minor, and the case simply does not deserve the time of this Court. *Universal Camera Corp.* v. *NLRB*, 340 U. S. 474, 491 (1951); *NLRB* v. *Walton Mfg. Co.*, 369 U. S. 404, 408 (1962).

As the petition notes, the Seventh Circuit originally issued its order in this case under its Rule 28, which meant that it would not even be published. Pet. Apps. B, F. For reasons not specified, the court later granted the motion of the Deputy Associate General Counsel for the Board asking that the opinion recording his victory be published. But the mere fact that the opinion will be published by the Court of Appeals does not raise this trifling controversy to the level required for any action by this Court.

The petition should be denied.

Respectfully submitted,

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